

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11136-GAO

FEDERAL TRADE COMMISSION,  
Plaintiff,

vs.

DIRECT MARKETING CONCEPTS, INC., d/b/a TODAY'S HEALTH and DIRECT  
FULFILLMENT, ITV DIRECT, INC., d/b/a DIRECT FULFILLMENT, DONALD W.  
BARRETT, TRIAD ML MARKETING, INC., KING MEDIA, INC., ALLEN STERN, LISA  
STERN, STEVEN RITCHEY and BP INTERNATIONAL INC.  
Defendants

ORDER  
July 14, 2008

O'TOOLE, D.J.

The motion by the Federal Trade Commission to strike affidavits, or portions thereof, submitted by the defendants in opposition to the Commission's motion for summary judgment is GRANTED in the following respects only:

1. The affidavit of Andrew Aldrich (dkt. no. 145) is stricken in its entirety for the reasons (a) that it is not shown to have been made upon personal knowledge, (b) that the attachments proffered are inadmissible hearsay, and (c) the scientific matter addressed by the affidavit falls within the scope of Rule 702 of the Federal Rules of Evidence and that necessary foundation for admission in evidence of such matter has not been made.

2. As to the affidavit of Simon Mena (dkt. no. 144), paragraphs 5, 6 (except for the penultimate sentence), and the first sentence of paragraph 7 are stricken for the reason that they do not appear to be statements concerning matters within the personal knowledge of the affiant.

In all other respects, the motion to strike is DENIED.

/s/ George A. O'Toole, Jr.  
United States District Judge